

EXHIBIT E - PART 1

ORIGINAL ¹

1
2 UNITED STATES DISTRICT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X
5 DONNY A. SINKOV, as Father and
6 Potential Personal Representative of
7 SPENCER SINKOV, deceased, and the
8 Estate of Spencer E. Sinkov, deceased,

9 Plaintiffs,

10 -against-

11 DONALD B. SMITH, individually and in
12 his official capacity as Sheriff of
13 Putnam County, JOSEPH A. VASATURO,
14 individually, LOUIS G. LAPOLLA,
15 individually, THE COUNTY OF PUTNAM,
16 New York, and AmeriCor, INC.,

17 Defendants.

18 -----X
19
20 222 Bloomingdale Road
21 White Plains, New York
22 February 13, 2008
23 11:18 a.m.

24 EXAMINATION BEFORE TRIAL of DONALD SMITH, a
25 Defendant in the above-captioned matter, held at
the above time and place, before a Notary Public
of the State of New York.

Gale Salit,
Shorthand Reporter

A P P E A R A N C E S :

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BY: TIMOTHY P. COON, ESQ.

ALSO PRESENT: Donny A. Sinkov

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2 IT IS HEREBY STIPULATED AND AGREED,
3 by and between the attorneys for the respective
4 parties hereto, that the sealing and filing of
5 the within deposition be waived; that such
6 deposition may be signed and sworn to before any
7 officer authorized to administer an oath with
8 the same force and effect as if signed and sworn
9 to before a Justice of this Court.
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12 IT IS FURTHER STIPULATED AND AGREED
13 that all objections, except as to form, are
14 reserved to the time of trial.
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17 IT IS FURTHER STIPULATED AND AGREED
18 that the within examination and any corrections
19 thereto may be signed before any Notary Public
20 with the same force and effect as if signed and
21 sworn to before this Court.
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- Donald Smith -

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D O N A L D S M I T H ,

having been duly sworn by Gale Salit,
a Notary Public within and for the State
of New York, was examined and testified
as follows:

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EXAMINATION BY MS. BERG:

Q. State your name and address for the
record, please.

A. Donald Blaine Smith, 3 County
Center, Carmel, New York 10512.

Q. Sheriff Smith, I'm going to be
asking you some questions here today in
connection with the Sinkov lawsuit.

A. Yes, ma'am.

Q. As before, let me know if there's
anything I say that you don't understand. Also,
verbalize all of your responses so they can be
taken down for the purposes of the transcript.

If you feel during the deposition
that an answer is incomplete or incorrect, I ask
you just to let me know before you leave here

- Donald Smith -

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2 today so we can make sure we have complete and
3 accurate answers on the record.

4 Do you understand all of that?

5 A. Yes, I do.

6 Q. You're currently the Sheriff of
7 Putnam County?

8 A. Yes, I am.

9 Q. You were installed into that
10 position January 1, 2002?

11 A. That is correct.

12 Q. Since that point in time can you
13 describe what your duties and responsibilities
14 have been with respect to the Putnam County
15 Correctional Facility?

16 A. First of all, I'm the chief law
17 enforcement officer in the county and as such
18 the Putnam County Correctional Facility comes
19 under the jurisdiction of the sheriff.

20 Q. What specifically are you
21 responsible for with respect to that facility?

22 A. As the Sheriff of the county I set
23 broad policies and procedures for the operation
24 of the Putnam County Correctional Facility.

25 Q. Is anybody involved in setting more

- Donald Smith -

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specific policies or procedures?

A. Yes.

Q. Who is that?

A. There's a jail administrator, Captain Robert LeFever, and he is assisted by a jail lieutenant, Lieutenant Pat O'Malley. And, of course, there's a whole team of staff that work in the jail. I also have an undersheriff, Peter Convery, who has responsibilities for the day-to-day operations of the department which includes the correctional facility.

Q. Since becoming sheriff on January 1, 2002 did you ever do anything to review what policies or procedures were in place in the jail?

A. Yes.

Q. When did you do that?

A. Well, actually, that's an ongoing process. But it started, as I recall, even before I became the sheriff. As soon as I was elected back in November of 2001 I started endeavoring to gain as much information about the total office of sheriff, which included the Putnam County Correctional Facility. I had a

- Donald Smith -

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difficult time getting some information because the outgoing sheriff did not really want to set up a transition team. I had a transition team that met and, you know, we were preparing to assume all of our responsibilities on January 1st, 2002. So I reviewed as many of the policies and procedures on the broad spectrum of the office of sheriff, which included the correctional facility.

Q. Then did you conduct a more specific review once you became sheriff?

A. Yes. Upon becoming the sheriff I met with my department heads -- I'm sorry, not department heads, division chiefs and discussed overall responsibilities. I certainly toured the correctional facility, I talked to people. And, of course, as part of my preparation, you know, I met with fellow sheriffs at the New York State Sheriff's Association and I also attended some training in the National Sheriff's Institute in Longmont, Colorado.

Q. At any point in time did you ever have occasion to review the State Commission of Corrections minimum standards?

- Donald Smith -

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2 A. Yes, I recall reading a number of
3 documents. And, you know, I don't have -- at
4 this point I don't have a specific date or
5 recollection of when it happened, but I know I
6 reviewed everything that was available to me.
7 It was quite a bit of work and I reviewed
8 everything that I could get my hands on.

9 Q. Did you conduct that review in
10 terms of the state's minimum standards sometime
11 say within the first year of your appointment or
12 election?

13 A. I believe so, yes.

14 Q. Did you also review the written
15 policies and procedures that were specific to
16 the Putnam County Correctional Facility?

17 A. Yes, I did.

18 Q. Do you recall with respect to those
19 policies and procedures that some of them
20 referred to the intake of new inmates?

21 A. Yes, I recall that. And I also
22 recall discussions with Captain Butler and at
23 the time Lieutenant LeFever and Sergeant
24 O'Malley.

25 Q. And the discussions that you had

- Donald Smith -

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2 with those three individuals, did those pertain
3 in any way to the intake procedures?

4 A. It was the broad scope of the
5 operations of the jail, which I'm sure included
6 the intake procedures. Because there were a
7 number of issues and concerns that I had at the
8 time and I took a number of actions on a number
9 of issues at the time. So...

10 Q. Do you recall if any of the
11 concerns or the issues that you acted upon
12 related in any way to the intake process?

13 A. I don't recall any issues relating
14 to the -- specifically to the intake process.

15 Q. Do you recall if any of the issues
16 related in any way to suicide prevention in the
17 jail?

18 A. I was concerned about suicide
19 prevention, obviously, and we talked about it.
20 And I know that we talked about the procedures
21 that were used being in compliance with the
22 Commission of Correction. And I was
23 specifically -- the specific concern that I
24 first had that related to the intake, and
25 virtually every aspect of an inmate's stay at

- Donald Smith -

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1 the jail, pertained to the medical. That was
2 one of the first things that I was very
3 concerned about, as well as I was concerned
4 about some of the supervisory procedures.
5

6 Q. In terms of the suicide prevention
7 procedures, do you recall which of the three
8 individuals or more than one that you actually
9 discussed those with?

10 A. I believe I discussed with all
11 three at various times, but obviously Captain
12 Butler was the jail administrator at the time,
13 so...

14 Q. Has he since retired?

15 A. He since has retired and
16 unfortunately Captain Butler passed away.

17 Q. What was his first name?

18 A. Gerald.

19 Q. When he retired did Lieutenant
20 LeFever become the jail administrator as a
21 captain?

22 A. Yes, that's correct.

23 Q. And Sergeant O'Malley moved up the
24 chain to Lieutenant LeFever's slot?

25 A. They were both promoted. Captain

- Donald Smith -

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2 LeFever -- Lieutenant LeFever was promoted to
3 captain and Sergeant Pat O'Malley was the
4 administration sergeant and was the obvious
5 choice to become the lieutenant.

6 Q. With respect to the suicide
7 prevention policies and procedures at the Putnam
8 County Correctional Facility, do you recall
9 anything more specific that one or more than one
10 of those individuals conveyed to you about those
11 procedures?

12 A. No.

13 Q. Do you recall who specifically told
14 you that the procedures were in compliance with
15 the Commission standards?

16 A. I don't recall, but again most of
17 my conversations were with Captain Butler as I
18 recall since he was the -- he was the jail
19 administrator.

20 Q. Did you discuss with any of those
21 individuals any intake forms that were being
22 used at the facility?

23 A. The only thing I recall is that
24 when we talked about the form that it was -- it
25 was the form approved by the Commission and it

- Donald Smith -

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2 had been approved by the Commission during a
3 number of cycle reviews. We were inspected
4 every year by the New York State Commission of
5 Correction.

6 Q. In terms of that approval, do you
7 know if that comes in any written form?

8 A. No, I'm not aware of any written
9 form. The Commission does render annual
10 inspections on the jail.

11 Q. Do you know if any of those annual
12 inspections specifically dealt in any way with
13 the intake forms?

14 A. I have never seen anything that had
15 anything critical about the intake form.

16 Q. Right. But do you know if as part
17 of the annual review that intake form was ever
18 looked at by a Commission member?

19 A. I can't specifically say if it was
20 or not.

21 Q. Who told you, if anyone, that the
22 form that the Putnam County Correctional
23 Facility was using when you became sheriff was
24 approved by the Commission?

25 A. I don't specifically recall.

- Donald Smith -

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2 Again, my conversations were primarily with
3 those three gentlemen.

4 Q. Do you specifically recall that one
5 of those three told you that the form that the
6 Putnam County Correctional Facility was using
7 for intake was in fact approved by the
8 Commission?

9 A. I specifically remember that it was
10 in compliance, it was in compliance with the
11 Commission. It was basically -- in fact, it was
12 basically a replica of the Commission's form.
13 It was the Commission's form. But it was
14 included in a complete packet of medical
15 questions so that everything would be all in one
16 packet. That was my memory of that discussion.

17 Q. This discussion would have occurred
18 sometime in 2002?

19 A. 2002.

20 Q. Do you recall at that time when you
21 were told that the form was basically a replica
22 of the Commission's form whether you were
23 alerted to any differences between the
24 Commission's form and the form Putnam County
25 used?

- Donald Smith -

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2 A. I was not.

3 Q. When did you first come to learn of
4 the actual differences between the two forms?

5 A. The first actual difference that I
6 learned of the forms was in the October/November
7 time frame of 2007.

8 Q. How did you first come to learn
9 that?

10 A. I believe it was -- I believe it
11 was in a -- I believe I had asked Confidential
12 Advisor Bill Spain, Esquire, to do some research
13 for me in preparation for some disciplinary
14 proceedings. And I believe that's when the
15 difference in the form came to my attention.

16 Q. So was it Spain that brought the
17 difference to your attention?

18 A. I believe it was -- it either --

19 MR. KLEINBERG: Anything
20 attorney/client privilege you don't have
21 to talk about.

22 A. He's an attorney. He's my
23 confidential advisor, so...

24 Q. So are you asserting
25 attorney/client privilege for your

- Donald Smith -

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communications with Spain?

A. Well, if I open up the attorney/client privilege, it's open and, you know, I think --

Q. You just have to answer yes or no.

MR. KLEINBERG: You have to answer yes, you are asserting the privilege.

Q. Yes, you are?

A. I have nothing to hide, but yes I am asserting the privilege.

MR. KLEINBERG: Yes, I'm instructing you to do that.

Q. Prior to your conversations with Spain in October and November of 2007 had you ever looked at the forms, the intake forms?

A. The intake forms in our jail?

Q. Yes.

A. Yes.

Q. Did you do that starting in 2002?

A. 2002, yes.

Q. In terms of the State Commission, you understood that they had a web site that you could access information from?

- Donald Smith -

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2 A. Yes.

3 Q. Did you ever do that?

4 A. I never went on the web site.

5 Q. Yourself personally?

6 A. No, never personally. Again, I
7 have a staff that, you know, I rely on for a lot
8 of support.

9 Q. You indicated that you did review
10 the state's written minimum standards for county
11 jails, correct?

12 A. Yes.

13 Q. Did you ever have occasion to
14 review the Commission's memoranda, which are
15 issued to the jail administrators?

16 A. From time to time I have reviewed
17 memoranda that came out from the Commission.

18 Q. How is it that you receive
19 information that's contained in that memoranda?

20 A. They will appear in my reading
21 file.

22 Q. Is that something that your
23 assistant gives you?

24 A. It would be my secretary would give
25 me a reading file or a signature file.

- Donald Smith -

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2 Q. Do you know if those Commission
3 memoranda are sent to you directly or sent
4 through the chain of command to you or something
5 else?

6 A. I don't know, but I would assume
7 they are sent several different ways.

8 Q. Do you recall if since you became
9 sheriff any of those Commission memoranda
10 pertained in any way to suicide prevention?

11 A. Oh, I believe there's a -- there
12 have been a number of Chairman's Memorandums
13 that have pertained to suicide prevention.
14 Suicide prevention is a concern in county jails
15 and lock-ups throughout the State of New York
16 and in prisons throughout the state, throughout
17 the country for that matter.

18 Q. You recall reviewing those memos
19 since January 1 of '02?

20 A. I recall -- you know, can I
21 specifically recall a day and a specific memo, I
22 can't. But I recall reviewing documents
23 pertaining to suicide from the Chairman, yes.

24 Q. Other than the Chairman's
25 memoranda, any other documents from the

- Donald Smith -

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Commission that you reviewed pertaining in any way to suicide prevention?

A. I review any reports that come down from the Commission. I am very involved with mental health issues in the State of New York. So it's a topic that deeply concerns me. I read everything I can get on the subject.

Q. Have you ever had any communications, either written or verbal, with the Office of Mental Health, the State's Office of Mental Health?

A. I have not personally had discussions with the State's Office of Mental Health, but I have been involved with Commissioner of Social Services and Mental Health Michael Piazza from Putnam County on a number of mental health issues affecting inmates in the jail, affecting the public at large which many times end up in our jail because of issues that occur out in the public. So I've only dealt through the Commissioner Mike Piazza. We've worked very, very closely and we have also worked with the Putnam Hospital Center on these issues.

- Donald Smith -

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2 after Spencer Sinkov's suicide, that I directed
3 that every intake in the jail would be reported
4 to the undersheriff and that the undersheriff
5 would report to me and go over any issues
6 pertaining to intake. Not only suicide issues,
7 but also any mental health issues, any medical
8 issues. That was one issue.

9 The other issue was after I found
10 out in the October/November time frame about the
11 form I directed Captain LeFever to use the state
12 form, to no longer use our form, the Putnam
13 County form that had been there for a number of
14 years.

15 Q. were those policies that you say
16 were modified under your tenure as sheriff done
17 in writing or verbally?

18 A. They were done verbally.

19 Q. For how long did the first
20 modification whereby every intake was reported
21 to the undersheriff and then to you, how long
22 did that stay in place?

23 A. It's still in place today.

24 Q. When did it begin?

25 A. It began shortly after Spencer's

- Donald Smith -

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death.

Q. Sometime then in the summer of 2006?

A. Right, and I can't remember the specific date. But it's something that we live with every day because it involves numerous phone calls.

Q. In terms of the information that's reported to the undersheriff and then to you, does that consist of written or verbal or both?

A. Verbal. It's by telephone and it -- it is both a push pull system if you will. In other words, if I don't know of an intake I get the call. And if I just happen to hear with my law enforcement responsibilities that someone is coming to jail and I haven't heard from the undersheriff, I will be calling him and asking him what's the status and to check on it, even if the inmate hasn't even been -- sometimes it's a situation where someone is arraigned and released, so I'm asking for -- it's a push pull system.

Q. What information are you verbally advised of as part of the system?

- Donald Smith -

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2 A. I'm advised of the shaded areas and
3 I'm advised of the score and I'm advised of the
4 general health of the inmate and then, of
5 course, I ask the undersheriff questions about
6 the status of the inmate.

7 Q. In terms of --

8 A. For example, is this a first
9 time -- is this a first time inmate who is in
10 for the first time.

11 Q. Anything else in terms of the
12 status?

13 A. It could be a number -- anything to
14 do with the health and welfare of the inmate.
15 And it's different depending on the situation,
16 but obviously the primary focus is the suicide
17 screening.

18 Q. So when you say you are advised of
19 the shaded areas and the score, you mean on the
20 suicide screening prevention form?

21 A. Yes, ma'am.

22 Q. In terms of the general health,
23 that would be on the medical part of that
24 packet?

25 A. That would be just on the

- Donald Smith -

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2 general -- you know, sometimes this would occur
3 even before medical has been involved, just if
4 there's anything unusual with the inmate, with
5 his status.

6 Q. Are you given any information on
7 the housing assignment for the new inmates?

8 A. No.

9 Q. Are you given any information on
10 whether the new inmates are placed on any
11 heightened supervision?

12 A. Yes. When you say heightened
13 supervision, then we go back to that previous
14 question. If it's a constant watch, then I
15 know, you know, where constant watches are done.

16 Q. Where is that?

17 A. They are done in North Housing.

18 Q. North Housing Two?

19 A. Yes, North Housing, the special
20 unit with four cells.

21 Q. In terms of heightened supervision,
22 there's also a 15-minute level of supervision?

23 A. There's three levels of
24 supervision. There's basically -- there's
25 general supervision, which involves a 30-minute

- Donald Smith -

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2 check, where officers are available but the
3 checks are made every 30 minutes. Then there's
4 active supervision. And active supervision
5 involves 15-minute supervisory visits. Then, of
6 course, there's constant supervision, which is
7 one-on-one supervision where the officer has
8 total eye contact, you know, with the inmate.
9 You could actually have one-on-two but also meet
10 the criteria of constant supervision.

11 Q. Where the one officer can visibly
12 see two inmates at the same time?

13 A. One officer can be sitting and
14 looking directly at two cells. That would meet
15 the Commission's standard.

16 Q. In terms of the modification in or
17 about the summer of '06 where you are notified
18 by the undersheriff of new intakes, are you as
19 part of that process notified of individuals
20 placed on active supervision or just constant
21 watch?

22 A. Well, basically -- basically, the
23 main concern, of course, is the constant
24 supervision. But the undersheriff during the
25 conversation with me will tell me, you know,

- Donald Smith -

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2 there's this problem and the person is, you
3 know, we put him on active supervision. We use
4 the active supervision quite a bit with new
5 intakes, but we don't use the active supervision
6 for, you know, suicide prevention.

7 Q. That's been true at least since the
8 summer of 2006?

9 A. That those phones calls have been
10 made, yes.

11 Q. In terms, though, of using active
12 supervision as a matter of practice in the jail
13 for suicide prevention prior to that time, prior
14 to the summer of '06, do you know if that was
15 used?

16 A. It is our policy that the only --
17 the only acceptable supervision for a suicidal
18 inmate would be a constant watch.

19 Q. And that was the policy then prior
20 to the summer of 2006?

21 A. I believe so.

22 Q. What do you base your belief on?

23 A. In that that is our written policy.

24 Q. Do you know if in practice, in
25 other words the way that policy has actually

- Donald Smith -

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been implemented, prior to the summer of 2006 whether active supervision was used for inmates who posed a risk of suicide?

A. In these depositions I have heard some information that is troubling. But through these depositions I have heard some issues pertaining to that question, Miss Berg.

Q. Put aside what you have heard during the course of this lawsuit. Prior to, for example, attending a deposition in this case, were you aware at any point in time that in practice staff at the jail did not place inmates on constant watch where the form indicated there was a risk of suicide?

A. No, I believed the policy was being followed, that they were being placed on a constant watch.

Q. What do you base your belief on?

A. First of all, just the number of the briefings at morning staff call, the number of constant watches that we had in the jail. We had a significant number of constant watches in the jail throughout my tenure as sheriff.

Q. Since January of 2002?

- Donald Smith -

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A. Yes.

Q. Anything else that you base your belief on?

A. Just living -- living my duties as the Sheriff of the county. You know, many times I have been in the jail, they have been on suicide watches. I've been briefed that people have been put on suicide watches. Now prior to -- prior to the summer of 2006 I wasn't getting a report every time an inmate was being put on a constant watch.

Q. why did you implement the modification to the policies now requiring that you personally be notified about every new intake?

A. I take my duties and responsibilities very seriously. I served many years in the military and I have a strong belief that everyone entrusted to our care is a person who has a life with hopes and dreams and I certainly wanted to ensure that a failsafe mechanism was put in to make sure that the leadership was involved with every decision.

Q. why not implement that failsafe

- Donald Smith -

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mechanism prior to the summer of 2006?

A. Prior to the summer of 2006 I believed the -- I believed the screening process was working.

Q. What did you base your belief on prior to the summer of 2006 that that process was working?

A. Every -- every -- every inspection that we had from the Commission of Correction was positive in this area. We didn't have a problem identified. Even when we had a suicide in I believe it was November of 2003, the Commission of Correction came down with a team and did a complete investigation and did not identify any, as I recall from the report, any issue specifically with the suicide screening and the -- I really -- I really didn't have any issue with -- there was an issue identified with the psychiatrist, the support. There was just no indication to me that there was such a problem.

Q. You indicated that you did learn of some information during the course of this lawsuit with respect to the actual practice in

- Donald Smith -

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2 the jail of not implementing constant watch in
3 cases where the suicide screening form was eight
4 or higher or shaded boxes were checked, correct?

5 MR. KLEINBERG: Objection.

6 A. I believe what I learned during
7 this lawsuit was -- obviously, we have the
8 tragic instance pertaining to Spencer. But I
9 learned during the lawsuit that the shaded boxes
10 were not being looked at in a manner that I
11 believed to be the case.

12 Q. In terms of the shaded boxes not
13 being looked at in a specific manner, did you
14 understand that those boxes were shaded for a
15 particular reason?

16 A. Yes, they are shaded for a
17 particular reason.

18 Q. Which is?

19 A. Which is if a shaded box is checked
20 or if the score is eight or higher, the inmate
21 should absolutely be put on a constant watch,
22 constant supervision.

23 Q. Did you also learn, either in this
24 case or elsewhere, that correction staff in the
25 facility did not always place inmates who scored

- Donald Smith -

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eight or higher on a constant watch?

MR. KLEINBERG: Objection.

Q. Again prior let's say to the summer of 2006.

A. During these depositions I heard some troubling information from some people who I will have to deal with under the disciplinary system within the correctional facility.

Q. Meaning Vasaturo and LaPolla?

A. Yes, ma'am.

Q. Anyone else?

A. At this time those were the only two that are involved in disciplinary action at this time.

Q. Do you recall learning of information from others in the case, namely Wendover and Oliver, about constant watch not being required, according to their view of the practices in the jail, when an inmate scores eight or higher?

A. I believe there was some issues in their depositions. I don't specifically remember each of their depositions, but certainly there's -- when these depositions are